

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the
Commission's Own Motion into the Pacific
Telesis Group's "spin-off" Proposal.

Investigation 93-02-028
(Filed February 17, 1993)

**ADMINISTRATIVE LAW JUDGE'S RULING
SEEKING BRIEFING**

On June 3, 2004, the undersigned Administrative Law Judge issued a ruling soliciting comments on concluding the above-titled proceeding. Specifically, the ruling asked parties: (1) whether or not, given the passage of time and jurisdictional issue, this proceeding had become academic or moot; (2) if not, how the Commission should conclude it; and (3) whether, and to what extent, the commenter wished to participate in any concluding phase of the case. Pacific Telephone Company, doing business as SBC California, and the Division of Ratepayer Advocates¹ (DRA) responded on June 17, 2004. No other party filed comments.

In its comments, SBC California noted that the 10-year old audit report prepared by Frederick & Warinner concerned the allocation and transfer of pension assets. The auditors found that the Separation Agreement, Decision (D.) 93-11-011, and the California Public Utilities Commission's (Commission) affiliate transaction rules had been complied with in all material respects, and the

¹ Formerly designated as the Office of Ratepayer Advocates

Commission took no further action following submission of the report. SBC asserted that the auditors found that the transfer of pension assets complied with the Separation Agreement. It maintained, however, that the auditors raised the speculative concern that depending on unknown future ratemaking treatment, the transfer had the potential to affect Pacific Bell ratepayers negatively. SBC California dismissed this concern.

SBC California stated that under the New Regulatory Framework (NRF) adopted in D.89-10-031, its prices had not been established based on its cost of providing service, and there is no further “ratemaking” applicable to these costs. As a result, prices have not changed because of changes in pension costs, and customers have not been affected by any changes in pension costs. In addition, SBC California insisted that its NRF start-up rates contained zero pension costs. It argued that the risk of cost recovery and changes in pension costs are borne by shareholders, and not by customers. SBC California saw the auditor's concern and recommendation as moot. (SBC California Comments at 4.)

SBC California acknowledged the difficulties of conducting a further investigation. The PacTel Corporation companies that were the subject of the spin-off (e.g., AirTouch), have since merged with other entities or ceased to exist. Moreover, SBC California noted that the extent of the Commission's regulation of wireless companies also has changed. (*See* 47 U.S.C. § 332.) Further, SBC California pointed out that reopening any portion of the spin-off transaction at this juncture not only would present practical difficulties, but also would directly conflict with the regulatory certainty the Commission sought to achieve when it ordered the audit to be undertaken immediately and be completed as soon as reasonably possible.

Finally, SBC California insisted that further investigation would be inappropriate based on additional public policy considerations. Over time, evidence can be lost, memories fade, and witnesses become unavailable. SBC California maintained that clearly it would be prejudicial to the parties to the spin-off transaction to subject the matter to uncertainty and challenge almost a decade after the audit report was submitted. For all of these reasons, SBC California argued that no further proceedings are warranted, and this matter should be promptly closed.

In its comments, DRA asserted that the remaining issues in the proceeding were neither academic nor moot, and urged the Commission to conclude the case by following its predecessor's recommendations regarding the 10-year old audit report. DRA characterized the issue of whether the Commission continued to have the jurisdictional authority to require the production of further information necessary to resolve the pension question as unclear. DRA advised that it appeared that the Commission retained jurisdiction over the PacTel's successors to enforce the conditions of the spin-off under *PG&E v. Public Utilities Commission*,² and to investigate whether pension assets were improperly transferred in the spin-off. It urged the Commission to assert jurisdiction.

DRA reiterated in its comments on the audit report that the audit was incomplete and deficient for failing to calculate the identified surplus pension assets that were improperly allocated to PacTel. It strongly recommended that an independent actuarial consultant be hired to complete the calculation and any

² *PG&E Corp., Petitioner v. Public Utilities Commission, Respondent; Office of Ratepayer Advocates et al., Real Parties in Interest*, (Cal. Ct. App., 2004) 118 Cal App 4th 1174, 2204 Cal App. Lexis 785.

pension surplus improperly transferred to PacTel be returned to Telesis' Master Trust.

DRA also recommended the actuarial consultant (1) review the entire pension asset transfer chronology, and (2) perform/supervise a recalculation of the 1993 and 1994 pension asset transfers from the Telesis pension Trust to the AirTouch Trust. DRA also stated that the identified violations of the Separation Agreement should be corrected and any refunds be made with interest.

DRA has urged the Commission to have the Telecommunications Division (TD) manage the actuarial consultant to administer the work needed to resolve the remaining issue. It has advised that once a new study is completed, DRA would then file comments on how any surplus should be treated.

Discussion

SBC California and DRA advised opposing courses of action in their responsive comments to the undersigned's query of what to do with this docket. However, in light of those comments and upon further analysis of the record, it is apparent that in order to resolve this docket the undersigned needs to elicit additional information. SBC California is asked to brief whether there are remaining issues in this docket that have any NRF implications.

Thus, **IT IS RULED** that to assist the Commission in resolving Investigation 93-02-028, SBC California shall submit its brief on or before May 1, 2006.

Dated April 11, 2006, at San Francisco, California.

/s/ JACQUELINE A. REED
Jacqueline A. Reed
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Seeking Briefing on all parties of record in this proceeding or their attorneys of record.

Dated April 11, 2006, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.